

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**REGINALD SMITH, # N-83733,
a/k/a SHAHID MONTANA, JR.,**

Plaintiff,

vs.

**DR KRIEGH, GAIL WALLS,
JANETT KINKADE,
ANNA SCHOOT, and CHERYL TEEL,**

Defendants.

Case No. 12-cv-1283-GPM

MEMORANDUM AND ORDER

MURPHY, District Judge:

This matter comes before the Court for case management. Plaintiff is currently incarcerated at Pontiac Correctional Center (“Pontiac”) and has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983, based on incidents that occurred while he was confined at Menard Correctional Center (“Menard”). Plaintiff’s complaint was filed on December 19, 2012, without payment of the \$350.00 filing fee. Nor did Plaintiff file a motion for leave to proceed *in forma pauperis* (“IFP”). The Clerk of Court advised him by letter dated December 19, 2012, that if he did not either pay the fee or file a motion for leave to proceed IFP within 30 days, this case would be dismissed (Doc. 2). A blank form motion to proceed IFP was mailed to him along with the letter. Plaintiff’s 30-day deadline was up on January 18, 2013, and to date he has neither paid nor filed a motion to proceed IFP in this matter.

IT IS THEREFORE ORDERED that this action is **DISMISSED WITHOUT PREJUDICE**. Any motion to reopen this matter, or any new complaint Plaintiff may file, must be accompanied by either full prepayment of the filing fee, or a motion to proceed IFP together

with a complete inmate trust fund account statement for the previous six months, certified by the institution's Trust Fund Officer.

Further, Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$350.00 remains due and payable. This obligation continues regardless of later developments in the suit, such as dismissal of the action or denial of leave to proceed IFP. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467-68 (7th Cir. 1998); *Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997).

In order to fulfill this payment obligation, the agency having custody of the Plaintiff is **DIRECTED** to remit the \$350.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$350.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher. Thereafter, Plaintiff shall make monthly payments of 20% of the preceding month's income credited to Plaintiff's prison trust fund account until the \$350.00 filing fee is paid in full. The agency having custody of Plaintiff shall forward these payments from the Plaintiff's trust fund account to the Clerk of this Court each time the Plaintiff's account exceeds \$10.00, until the \$350.00 fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202. The Clerk is **DIRECTED** to mail a copy of this order to the Trust Fund Officer at Pontiac Correctional Center upon entry of this Order.

IT IS SO ORDERED.

DATED: February 26, 2013

s/ G. Patrick Murphy
G. PATRICK MURPHY
United States District Judge